



## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. "AFSA" means Arbitration Foundation of South Africa.
- 1.2. "The Act" means the Electronic Communications Act 36 of 2005, as amended from time to time, and any regulations, as may be amended or replaced from time to time.
- 1.3. "Agreement" means the terms of this Agreement set out hereinafter, including annexures, schedules, and/or addendums hereto, and validly executed amendments.
- 1.4. "Authority" means the Independent Communications Authority of South Africa established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 and its successors who govern and oversee the telecommunications and electronic communications industry.
- 1.5. "Body Corporate" means the appointed representative of the owners in relation to a building and/or the land in a sectional title scheme who are responsible to manage and maintain the common areas. 'Body Corporate' shall be deemed to incorporate a Home Owners Association or similar representative body, as the case may be.
- 1.6. "Business Day" means Monday to Friday excluding any public holiday as defined under the Public Holiday Act, 36 of 1994.
- 1.7. "COIDA" means the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993, as amended.
- 1.8. "Complex Infrastructure" means existing underground ducts or similar infrastructure in an MDU.
- 1.9. "Construction Hours" means Monday to Friday from 08:00 to 17:00, Saturday 09:00 to 14:00 excluding any public holiday as defined under the Public Holiday Act, 36 of 1994; and unless otherwise agreed upon between the Parties.
- 1.10. "ONT" means the Optical Network Terminal, which is installed in the Customer's property where the fibre terminates.
- 1.11. "Customer" means a natural person or persons residing on the Property that has formally requested an installation of fibre in order to have the CULABYTE Services supplied. Customer may also refer to a juristic person, which has formally requested an installation of fibre in order to have the CULABYTE Services supplied.
- 1.12. "ECS" means any system of electronic communications facilities (as defined under section 1 of the Act, including without limitation satellite systems; fixed systems (circuit and packet switched); mobile systems; fibre optic cables (undersea and land-based); electricity cable systems (to the extent used for electronic communications services); and other transmission systems, used for conveyance of electronic communications.
- 1.13. "ECS" means a service as defined under section 1 of the Act, whereby a person makes available an electronic communications network, whether by sale, lease or otherwise, for that person's own use for the provision of an electronic communications service or broadcasting service; to another person for that other person's use in the provision of an electronic communications service or broadcasting service; or for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated in the Act, and 'network services' is construed accordingly.
- 1.14. "ICASA" means The Independent Communications Authority of South Africa, established in terms of the Independent Communications Authority Act No. 13 of 2000.
- 1.15. "Infrastructure" means the last mile optical fibre network infrastructure to be supplied and installed at the MDU as defined in the Electronic Communications Act No. 36 of 2005, as amended.
- 1.16. "Installation Plan" means the document to be read together with this Agreement indicating how and where the Infrastructure and Telecommunication Equipment will be installed at the MDU.
- 1.17. "Land Owner" means the party further defined as being the owner of the property or its appointed representative, whose tenants or occupants may contract with CULABYTE for the CULABYTE services.
- 1.18. "MDU" means the property with buildings or land containing multiple dwellings represented by the Land Owner or the Body Corporate. The terms 'property' and 'MDU' shall be interchangeable, as the context requires.
- 1.19. "Office Hours" means Monday to Friday from 08:00 to 17:00, Saturday 09:00 to 13:00 excluding any public holiday as defined under the Public Holiday Act, 36 of 1994.
- 1.20. "Parties" means collectively, CULABYTE and the Land Owner or Body Corporate. 'Party' shall mean either CULABYTE, the Land Owner or Body Corporate as the context requires.
- 1.21. "Service Provider" means any CULABYTE approved ECS and or ECNS licensed entity entitled to provide its services to the Customer over the CULABYTE Network.
- 1.22. "Telecommunication Equipment" means all the physical network hardware to be supplied and installed at the MDU.

- 1.23. "CULABYTE" means CULABYTE (Pty) Limited, Registration number 2023/647921/07, a private company incorporated in terms of the laws of the Republic of South Africa.
- 1.24. "CULABYTE Network" means the electronic communications network, the Infrastructure, the Telecommunications Equipment and ONT's used by CULABYTE to render the CULABYTE Services.
- 1.25. "CULABYTE Services" means any of the services available and supplied by Service Providers on the CULABYTE Network to the Customer, which the Customer may elect to purchase and use, and for which the Customer requires the Infrastructure and the ONT.

## **2. THE AGREEMENT AND FORMALITIES**

- 2.1. This Agreement will record the terms upon which CULABYTE may access the property for the construction, maintenance, and operation of Telecommunications equipment, the Infrastructure and CPE.
- 2.2. CULABYTE will at all times remain the owner of the Telecommunications Equipment, Infrastructure and CPE's installed at the MDU as described in the Installation Plan until the Infrastructure is deemed to be obsolete by CULABYTE.
- 2.3. CULABYTE will at all times, and to the exclusion of any other party, be entitled to the benefit and risk in and to the Infrastructure, save for agreements concluded between CULABYTE and Service Providers.
- 2.4. The Agreement will commence on the date of signature by the Land Owner or Body Corporate of the Installation Plan and will endure for as long as the Infrastructure is of beneficial use and is capable of delivering CULABYTE Services to the Customer.
- 2.5. CULABYTE/Service Providers reserves the right to access the MDU, with a minimum of 2 weeks' notice, in order to market to/engage with customers in one or both of the below manners:
  - 2.5.1. Door to door marketing;
  - 2.5.2. Activation at central/preferred point inside the confines of the MDU boundaries.
- 2.6. The Body Corporate agrees to assist CULABYTE with advertisement to customers in one of the below manners (where applicable):
  - 2.6.1. Newsletter (printed/digital);
  - 2.6.2. MDU's website;
  - 2.6.3. MDU electronic/non-electronic signage/notice boards.

## **3. THE INFRASTRUCTURE, TELECOMMUNICATIONS EQUIPMENT AND ONT'S**

- 3.1. CULABYTE is the holder of a valid and subsisting ECS licenses, which ECS licenses entitle CULABYTE to, inter alia, construct, maintain and operate electronic communication network services and infrastructure in accordance with clause 3.1 of such license.
- 3.2. During the term of this Agreement CULABYTE will construct, operate and maintain its Telecommunications Equipment and Infrastructure at the MDU at its own cost, which will be made available to Service Providers.
- 3.3. If possible and subject to agreement between the Parties, CULABYTE will endeavour to make use of Complex Infrastructure within an MDU in order to install CULABYTE'S Infrastructure and Telecommunications Equipment.
- 3.4. Upon receipt of an order from a Customer, CULABYTE will install dedicated Infrastructure to each Customer's dwelling (hereafter the "Customer Drop") and this will be deemed an extension of the CULABYTE Infrastructure.
- 3.5. CULABYTE will liaise directly with the Customer regarding scheduling a convenient time for installing the Customer Drop.
- 3.6. Upon commencement, CULABYTE will, in consultation with the Land Owner or Body Corporate commence with the construction, maintenance and operation of the Infrastructure. The Land Owner or Body Corporate undertakes to co-operate with CULABYTE as far as reasonably possible in this regard.
- 3.7. CULABYTE warrants that any third party performing the rights granted in the ECS license on CULABYTE'S behalf will hold the usual necessary comprehensive professional indemnity insurance in respect of inter alia damage, public liability and COIDA.
- 3.8. The Land Owner or Body Corporate agrees to grant to CULABYTE access to the MDU during Construction Hours to attend to the necessary Customer Drop installations, and for the operation and construction of the Infrastructure and Telecommunications Equipment. In the event that CULABYTE requires access to the MDU outside of Construction Hours for the maintenance or repair of the Infrastructure and Telecommunications Equipment, the Land Owner or Body Corporate agrees to grant such access to CULABYTE.
- 3.9. CULABYTE may have reasonable access to the property at all reasonable times and on reasonable notice to and in consultation with the Land Owner and/or Body Corporate. CULABYTE'S access to the property will not be limited to the initial Infrastructure installation but access will be required upon each Customer Drop installation, as well as for maintenance to its Telecommunications Equipment and Infrastructure.
- 3.10. Access to the property may not be unreasonably withheld by the Land Owner or Body Corporate. In the event that the Land Owner or Body Corporate, in the opinion of CULABYTE, unreasonably withholds such consent, such conduct will be deemed to be a material breach of this Agreement, in which event CULABYTE will be entitled to the remedies set out in clause 6 below.

- 3.11. The Land Owner or Body Corporate acknowledges that the rights granted to CULABYTE, in terms of clause 3.2 of the ECNS License, may be performed by a third party and that CULABYTE will be liable for any acts or omissions of such third parties on the basis set out therein.
- 3.12. Should the construction, maintenance, and installation of Infrastructure result in any damage to the property, cosmetic or otherwise, CULABYTE undertakes to reinstate the property as near as practically possible to the state that the property was in immediately prior to any such construction, maintenance, and installation. Photographs of the MDU will be taken prior to the commencement of the build and shall act as a frame of reference for reinstatement.

#### **4. DAMAGE OR DESTRUCTION TO THE INFRASTRUCTURE**

- 4.1. The Land Owner or Body Corporate acknowledges that, save for the marketability of the property, the Land Owner or Body Corporate has no beneficial use of the Infrastructure or any right in and to the Infrastructure and Telecommunication Equipment of any nature whatsoever.
- 4.2. In the event that the Infrastructure or Telecommunications Equipment is damaged or destroyed, CULABYTE will repair the damaged or destroyed section of the Infrastructure or Telecommunications Equipment within a reasonable time and will reinstate the property in accordance with clause 3.12.
- 4.3. CULABYTE shall during the term of this Agreement maintain public liability insurance in an amount not less than One Million (R 1,000 000.00) Rands to cover any damages caused by the installation of CULABYTE Infrastructure and Telecommunications Equipment.
- 4.4. The Land Owner or Body Corporate agrees to take all reasonable measures to mitigate the risk of a third party damaging CULABYTE'S Infrastructure or Telecommunications Equipment in the course of any work the third party may be doing in the MDU, including but not limited to explicitly indicating to a third party where CULABYTE'S Infrastructure is in the MDU.

#### **INDEMNITIES**

- 4.5. CULABYTE indemnifies the Land Owner or Body Corporate and holds it harmless against any and all claims of whatsoever nature should such claim be made against the Land Owner's or Body Corporate's name, arising from:
  - 4.5.1. actual or direct damage incurred in the construction, maintenance, and operation of the Infrastructure or;
  - 4.5.2. CULABYTE'S obligations to the Service Provider.
- 4.6. The Land Owner or Body Corporate indemnifies CULABYTE and holds it harmless against any direct damages howsoever arising from the failure of the Land Owner or Body Corporate to grant CULABYTE reasonable access to the property in accordance with the terms of clause 3 above.
- 4.7. In the event that a third party other than CULABYTE installs infrastructure on the property and damages, inconveniences, vandalises or results in the theft of CULABYTE Infrastructure, the Land Owner or Body Corporate agrees to assist and provide CULABYTE with any and all information reasonably required to allow CULABYTE to prosecute its claim against the third party.
- 4.8. The Land Owner or Body Corporate indemnifies CULABYTE and holds it harmless against any and all claims of whatsoever nature and agrees to defend on CULABYTE'S behalf should such claim be made against CULABYTE by a third party, arising from the Land Owner or Body Corporate's negligence and/or breach of clause 4.4.

#### **5. DISPUTE RESOLUTION**

- 5.1. Should any dispute, disagreement, or claim arise between the Parties (hereafter referred to as "the dispute") in connection with this Agreement, the Parties will first endeavour to resolve the dispute by negotiation. The negotiation will entail one Party inviting the other in writing to a meeting and attempting to resolve the dispute within 7 (seven) days from the date of the written invitation.
- 5.2. If the Parties fail to resolve a dispute by Agreement in terms of clause 5.1, either Party may refer the dispute for resolution by way of arbitration. Any arbitration shall be held in English, in Sandton, before one arbitrator in accordance with the Arbitration Act, 1965 and the procedural rules which shall apply are the Commercial Rules of Arbitration of the AFSA. If the Parties are unable to agree on the person to be appointed as arbitrator, a suitably qualified person shall be appointed at the request of either Party by the Chairperson of the Bar Council, Johannesburg. This clause shall survive termination of the Agreement and is an irrevocable consent to arbitration.
- 5.3. None of the terms of this clause 5 will prevent a Party from approaching a court of competent jurisdiction to obtain urgent relief.

#### **6. BREACH**

- 6.1. Should any Party breach or otherwise be in default of any of its material obligations under or in terms of this Agreement and remain in default or fail to remedy such breach within 30 (thirty) days of receipt of written notice calling upon it to do so, the other Party will be entitled, but not obliged, in addition to any other rights which it may have or remedies which may be available to it:
  - 6.1.1. to terminate the Agreement and claim damages from the defaulting Party, provided the Parties have exhausted the remedy set out in clause 5.2; or
  - 6.1.2. to obtain an order against such defaulting Party for specific performance, with or without claiming damages;

- 6.1.3. to claim such damages as it may have suffered in lieu of specific performance, together with all amounts owing under or in terms of this Agreement, whether or not such amounts have become due for payment; and
- 6.1.4. to refer the matter to dispute resolution in accordance with clause 5 above.
- 6.2. Any damages claimed in terms of this clause are limited to proven direct damages.
- 6.3. In the event of cancellation, the Land Owner or Body Corporate agrees to grant CULABYTE access to the MDU for purposes of removal of CULABYTE'S Infrastructure and Telecommunications Equipment.
- 6.4. The Land Owner or Body Corporate acknowledges that notwithstanding any breach that may be perpetrated by CULABYTE during the term of this Agreement, no such breach of any nature whatsoever will entitle the Land Owner or Body Corporate to deny reasonable access to the MDU and that the only remedies to which the Land Owner or Body Corporate is entitled are those set out above.

## **7. LEGAL ADDRESS FOR SERVICE (DOMICILIUM AND NOTICES)**

- 7.1. The Parties choose the addresses set out below as their chosen place to receive legal notices (domicilium citandi et executandi).
- 7.2. Culabyte (Pty) Ltd at: Unit 268 Faircape Village, 27 Chanteclair Ave, Onrus, 7200
- 7.3. The Landowner or Body Corporate at the physical or residential address specified in the Installation Plan, unless a valid physical or residential address is provided and recorded in the Agreement.
- 7.4. All notices given in terms of this Agreement shall be in writing.

## **8. GENERAL**

- 8.1. This Agreement constitutes the entire Agreement between the Parties and no warranties, representations, or other terms and conditions of whatsoever nature not expressly recorded herein will be of any force or effect, save for any addendums concluded between the Parties.
- 8.2. The Parties undertake to do all such things necessary or required to give effect to this Agreement.
- 8.3. Save as expressly provided for herein, neither Party will be entitled to cede or assign this Agreement or any of their rights and obligations herein except with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 8.4. The Land Owner undertakes to notify CULABYTE at least 90 (ninety) days prior to any transfer, alienation, and/or disposal of the property.
- 8.5. In the event that any of the provisions of this Agreement are found to be invalid, unlawful, or unenforceable such terms will be severed from the remaining terms, which will continue to be valid and enforceable.
- 8.6. The Body Corporate hereby renounces the benefits of the defences and exceptions of no value received, non numeratae pecuniae, non causa debiti, errore calculi and revision of accounts, with the full force, meaning and effect whereof the Body Corporate declares itself to be acquainted.
- 8.7. Each and every provision of this Agreement shall be construed as though both parties participated equally in the drafting of same, and any rule of construction that a document shall be construed against the drafting party, including without limitation, the doctrine commonly known as contra proferentem, shall not be applicable to this Agreement.
- 8.8. Any amendment, variation, cession, novation or termination of this Agreement must be reduced to writing and signed by both Parties.

## **9. EXCLUSIVITY**

- 9.1. The body corporate agrees to give CULABYTE 5 (five) years exclusivity as the only Fibre network operator to provide service within the complex.
- 9.2. Exclusivity only relates to physical infrastructure and does not include internet service providers as CULABYTE is an open access network provider.

## **10. OTHER/USE OF NETWORK OR SERVICES**

- 10.1. Access to the fibre network will be allowed for cameras provided the camera network plans are handed in to CULABYTE prior to the network build commences.
- 10.2. Buy engaging with, applying for and using any Culabyte service, I hereby agree to the Terms and Conditions contained herein.
- 10.3. CULABYTE cannot be held responsible for customer errors such as customer purchasing bundles for the wrong service. Once a bundle has been purchased CULABYTE will not provide any refunds as sales are final.
- 10.4. The Customer indemnifies CULABYTE and any of its partners from Customer loss of data or services caused by its underlying network providers. It is the responsibility of the Customer to claim any losses experienced from the underlying network provider.
- 10.5. The Land Owner hereby indemnifies Culabyte against any losses of whatsoever nature incurred as a result of any unauthorised access.
- 10.6. Culabyte does not take responsibility for any errors that may occur on the e-Commerce portal but will attempt to rectify any such issues as quickly as possible once they are brought to our attention.

- 10.7. In the event that Culabyte observes any abuse or misuse of this e-Commerce portal, UI or API access by the Client, we reserve the right to suspend and terminate access to these facilities without notice. Our preferred course of action is to advise you of the inappropriate behaviour and any corrective action that is necessary. However, certain circumstances may warrant immediate termination of access without any notice at Culabyte's sole discretion.
- 10.8. The Land Owner undertakes to notify Culabyte immediately and in writing in the event where the information provided and/or the applicant status changes.